Supreme Court, U.S.
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No. 02-1005

In The

Supreme Court Of The United States

KEVIN SEARLES and DEBRA SWANSON,

Petitioners,

v.

JATIN PATEL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE CASE

This action was commenced in the Connecticut Superior Court, Judicial District of Hartford at Hartford on June 3, 1999 by the respondent, Jatin Patel, against the two petitioner-defendants. The Complaint, which was amended on or about September 1, 1999, and again on or about May 18, 2000, originally alleged libel, invasion of privacy by "false light," and violation of civil rights pursuant to Title 42, United States Code § 1983.

On June 30, 1999, the petitioners filed for removal from the Superior Court to the United States District Court for the District of Connecticut, and on July 7, 1999, the case was docketed by the District Court.

The respondent's supplemental state law claims of libel and invasion of privacy by "false light" are not challenged in this appeal. In the third count, pursuant to Title 42 U.S.C. § 1983, the respondent alleged substantive due process violations of his right to association and familial integrity and relationships, in violation of the first, ninth and fourteenth amendments to the United States Constitution, as well as procedural due process violations, because of the petitioners' active efforts at "extinguishing of familial affection, contact and relationships." In a separate fourth count, labeled "stigma plus," the respondent alleged substantive due process violations by the petitioners, who defamed him by creating a stigma to his reputation which caused the destruction of his familial relationships, as well as his right to continued employment and ability to live in Connecticut. [1]

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[1]The Court of Appeals did not reach this separate substantive due process claim, addressing only the interference with familial association rights.

The petitioners filed their motion to dismiss on or about November 1, 1999. The respondent filed his memorandum in opposition on or about February 28, 2000. The United States District Court for the District of Connecticut (Stefan R. Underhill, U.S.D.J.) denied the petitioners' motion in a ruling dated November 14, 2000. The United States Court of Appeals for the Second Circuit affirmed on September 30, 2002 in an opinion by Cardamone, J., and joined by Pooler and B.D. Parker, JJ.

The respondent sought monetary and declaratory relief for injuries suffered when the petitioners recklessly and deliberately published and then disseminated documents falsely stating that the respondent brutally murdered his mother and sister, despite the absence of any evidence to support this outrageous assertion. The petitioners, unable to solve this heinous crime, simply fabricated "evidence." The petitioners then traveled to respondent's new home in Tennessee where Searles hand-delivered a letter to the respondent's wife warning her that if she did not turn against him, he would kill again, and that she and her children would be the next likely victims.

The petitioners filed an affirmative defense of qualified immunity, and then moved to dismiss under Federal Rule of Civil Procedure 12(c). The district court properly denied this motion, and the petitioners do not raise any issues that require granting of the instant writ of certiorari.

REASONS FOR DENYING THE WRIT

The petitioners unfortunately have misconstrued the Court of Appeals' decision in their efforts to seek review by this Court. Contrary to their assertions, the Second Circuit

decision does not conflict with any decision of this Court or with any other decisions by the various circuit courts. According to petitioners, the Second Circuit refused to address the qualified immunity issue because it was raised on a motion to dismiss rather than as a motion for summary judgment. Pet. at 5. However, the Second Circuit clearly and correctly construed the substantive due process right to familial association consistent with this Court's past precedents, and fully resolved the qualified immunity issue presented, *albeit* adversely to the petitioners' wishes.

The petitioners also assert that the Second Circuit's construction of the constitutional right to familial association conflicts with the decisions of other circuits, but then fails to name any case where a conflict exists, and then misstates the nature of the respondent's claim by suggesting that their own misconduct was only "incidentally" related to the destruction of the family ties. To the contrary, respondents complaint alleged that the respondents' actions intentionally were directed towards destruction of the petitioner's family because they believed it would further their investigative goals.

Finally, the petitioners claim that the Second Circuit decision leaves police officers without a "useful description of the contours of the right" to familial association, arguing essentially that in the field of fighting crime, any tactics directed against a family – no matter how outrageous or shocking – should be immune from civil liability in the name of serious crime investigation. The court of appeals decision correctly rejected this sweeping and unbridled assertion of authority claimed by petitioners.

I. THE COURT OF APPEALS CONDUCTED A PROPER ANALYSIS OF THE QUALIFIED IMMUNITY CLAIM.

At the outset, the petitioners erroneously suggest that the court below failed to follow this Court's admonition to resolve the qualified immunity issue at the earliest possible stage of the litigation. Pet. at 10. This is simply not correct. The court of appeals correctly cited to the two-prong analysis for qualified immunity claims as required by this Court's decision in *Wilson v. Layne*, 526 U.S. 603, 609 (1999) and then applied it. The court below first concluded that the Constitution has long prohibited unwarranted governmental interference with familial association "as a fundamental element of personal liberty," citing *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984). Pet. at 7a. It then noted that petitioners "concede[d that] a right to intimate association exists . . ." at least with regard to husband-wife and parent-child relationships *Id.* Finally, the court below held that the particular relationships that were destroyed, i.e. father-son, siblings, wife and children all "receive the greatest degree of protection because they are among the most intimate of relationships." Pet. at 8a.

It is patently clear that the court below conducted a full analysis of the qualified immunity claim, and rejected it. Moreover, since this writ arises on a motion to dismiss at the pleadings stage, the Second Circuit correctly construed the complaint as true and in a light most favorable to respondent. In that regard, the court below was presented with a factual scenario demonstrating outrageous misconduct on the part of petitioners:

On March 21, 1996, the respondent's mother, Champa Patel and his sister, Anita Patel, were murdered in their home in the Town of Windsor, Connecticut. Plaintiff's Amended Complaint at ¶6 (Pet. at 25a). The Windsor Police Department's investigation was commenced immediately thereafter by petitioners Swanson and Searles. ¶¶ 4,5,6 (*Id.*). After investigating the double homicide for two months without success,[2] the petitioners were frustrated and decided to fabricate evidence implicating the respondent in order to create an environment of hostility and mistrust among his family members. *Id.* ¶¶ 7,8 (*Id.*).

In May, 1996, Swanson concocted a fake typed "confession" implicating one of respondent's relatives, and circulated the document to the media - including two daily newspapers - while falsely representing that the letters were drafted on the respondent's typewriter. *Id.* ¶9 (Pet. at 25a-26a). Swanson also delivered a copy of this letter to the respondent's father. *Id.*

On or about June 9, 1997, Swanson and Searles drafted a "memorandum," entitled "Jatin Patel as suspect," that set forth a list of "facts" suggesting that the respondent was responsible for the murders of his mother and sister. *Id.* ¶10 (Pet. at 26a). The memorandum made false and reckless accusations about the respondent and was created expressly to respond to the family's inquiries as to why the police continued to label the respondent as the perpetrator of these heinous crimes. Furthermore, it was created with the intention that it be disseminated to members of respondent's family and subsequently to the news media. *Id.* ¶¶ 10,11 (Pet.

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[2] The crimes were never solved, and no arrests were ever made. Id. ¶ 7. (Pet. at 25a).

at 26a).

This memorandum described a non-existent "rift" between the respondent and his sister. *Id.* ¶ (Id.) This false claim of a "severe" family dispute was concocted because the petitioners knew that Anita's minor daughter, the respondent's niece, was an eye-witness to the murders who told police that she did not recognize the assailant. By falsely suggesting that the respondent had little contact with his niece, the petitioners created the false impression that the girl "would not recognize him" as the murderer. *Id.* The memorandum also falsely represented that the respondent was experiencing severe financial problems, and that his net worth plummeted from $300,000 to $32,000 from 1995 to 1996, in order to concoct a financial motive for the murders. It further claimed (falsely) that the respondent failed a polygraph test, refused to submit to further testing and refused to be interviewed by police. *Id.* ¶11. (Pet. at 26a-27a).

When these tactics failed to produce a break in the case, the petitioners traveled to the respondent's home in Tennessee, where on or about November 6, 1997, Swanson, with the approval and assistance of Searles, drafted a hand-written letter which she delivered to the respondent's wife, Seema, and others. In this letter, Swanson accused the respondent of "caus[ing] the brutal torture and murder of two other women," warning the respondent's wife that he would become angry enough "again" to murder her and their children, and falsely stated that the respondent led a "double life" that was responsible for the murders. *Id.* ¶12 (Pet. at 27a).

The petitioners also published details about the

respondent's private relationships with other women that predated his marriage, along with other personal details that would be deemed highly objectionable to average persons. *Id.* ¶¶ 30, 31 (Pet. at 27a-28a).

The actions of the petitioners had an extreme and devastating impact on the respondent's relationship with his family, who divided over the accusations. As a consequence, the respondent was ostracized from the majority of his family. *Id.* ¶ 53 (Pet. at 28a).[3] His father and siblings cut off all communication with him, thus completely destroying those familial relationships. The respondent was also forced to leave his employment and life in Connecticut and move to another state. *Id.* ¶¶ 80-82 (Pet. at 29a). Indeed, the petitioners' actions "caused the complete destruction of the respondent's familial relationships, right to continue his employment and right to continue to reside in the State of Connecticut." *Id.* ¶ 83 (Pet. at 29a).

The petitioners continue to minimize the devastating impact that their conduct had on the respondent and his family by suggesting that mere "ostracization" was not a significant enough impairment of his familial ties to constitute a violation. However, as set forth above, and as noted by the court below, the petitioners set out to disrupt the respondent's familial ties because they hoped that such animosity would lead family members to turn on him and, thereby, produce leads against him. However, while the petitioners were successful at turning the family against

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[3] While the complaint referenced the respondent's family *and friends*, both the District Court and the Court of Appeals limited their analysis to the impact of the petitioners' actions on the respondent's family relations.

respondent by their deception and falsehoods, it never led to any evidence implicating him in the murders. Thus, as the Second Circuit aptly stated, "the officers used their authority to interfere with his family relations in a particularly pernicious way: they attacked the relationships directly rather than simply erecting a legal barrier . . . to prevent contact between [respondent] and his family members." Pet. at 10a.

A. The Respondent Stated a Cognizable and Clearly Recognized Claim.

Despite petitioners' efforts to minimize their outrageous behavior, the respondent claims that the actions at issue were so egregious that they violated established constitutional rights, and that the petitioners would have reason to know that. To tell the respondent's family that he killed his mother and sister, to create fake evidence purporting to implicate him and then disseminate it to the press, and to threaten the respondent's wife and family by suggesting he will murder them, as well, in the hope of garnering investigatory leads to solve a crime, is so outrageous and extreme that the petitioners can hardly argue that they did not recognize the illegality and unconstitutionality of their behavior. A reviewing court must consider "not what a lawyer would learn or intuit from researching case law, but what a reasonable person in [petitioners'] position should know" about the appropriateness of the conduct. *Young v. County of Fulton*, 160 F.3d 899, 903 (2d Cir. 1998). *See also Anderson v. Creighton*, 483 U.S. 635, 646 (1987) (qualified immunity intended to provide government officials with ability reasonably to anticipate when their conduct may give rise to liability).

This Court's decisions in *Wilson v. Layne*, 526 U.S. 603 (1999) and *County of Sacramento v. Lewis*, 523 U.S. 833 (1998) are the starting points of the constitutional analysis, with lower courts instructed "to determine first whether the plaintiff has alleged a deprivation of a constitutional right at all," before reaching the question whether the right was clearly established at the time. However this Court also made clear last term in *Hope v. Pelzer*, 536 U.S. , 122 S.Ct. 2508, 2515 (2002), that there is no requirement that a plaintiff point to a prior case with "fundamentally similar" or "materially similar" facts in order to withstand a qualified immunity defense. The Second Circuit previously made the same point, noting that "the absence of legal precedent addressing an identical factual scenario does not necessarily yield a conclusion that the law is not clearly established." *Johnson v. Newburgh Enlarged School District*, 239 F.3d 246, 251 (2d Cir. 2001). In fact, "'the absence of a reported case with similar facts demonstrates nothing more than widespread compliance with' the well-recognized applications of the right at issue . . .." *Id.*

The respondent alleged violations of his constitutional rights "of association and familial integrity and relationships," and the "right not to suffer loss of liberty interests including the extinguishing of familial affection, contact and relationships, without due process of law, in violation of the fourteenth amendment to the United States Constitution." Pet. at 28a. Contrary to petitioners' assertions, these are cognizable federal claims that were clearly established at the time of their acts, and granting the instant writ will not further clarify these claims.

B. The Right to Associate with Family was Clearly Established in 1996.

This Court has recognized that there is a clearly established constitutional right to familial privacy and autonomy, and the Court of Appeals merely followed these precedents. The Constitution affords protection to two distinct types of association, "intimate association" and "expressive association." *Roberts , supra*, 468 U.S. at 617-18. The right to intimate association guarantees an individual the right to enter or remain in an intimate relationship free from undue intrusion by the state, which, at a minimum, extends to relationships that "attend the creation and sustenance of a family – marriage, childbirth, the raising and educating of children, and cohabitation with one's relatives." *Id.* Specifically, this Court has held that the Constitution "protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Moore v. City of East Cleveland*, 431 U.S. 494, 503-04 (1977). The right to familial integrity is also protected by the Ninth Amendment and the Due Process and Equal Protection clauses of the Fourteenth Amendment and is so important that the Supreme Court has held that there is a "private realm of family life which the state *cannot* enter." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (emphasis supplied); *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816, 842 (1977). The Supreme Court, in recognizing that there is a right to privacy, autonomy, and integrity in the family, has prohibited interference with intimate family decisions. *See Moore*, 431 U.S. at 499-500 (family living arrangements); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-40 (1974) (mandatory maternity leave without pay); *Griswold v.*

Connecticut, 381 U.S. 479, 486 (1965) (birth control). Further, the Court has affirmatively held that the government is not allowed to sever, alter, or otherwise affect family relationships without due process of law. *See Santosky v. Kramer*, 455 U.S. 745 (1982); *Little v. Streater*, 452 U.S. 1, 13 (1981); *Stanley, supra*, 405 U.S. at 651-52.

This Court also found that "[p]rotecting [the familial] relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty." *Roberts, supra*, 468 U.S. at 617-18. The Second Circuit previously had extended this fundamental constitutional right to familial relationships such as siblings, parent/child, and husband and wife. *See, e.g. Rivera v. Marcus*, 696 F.3d 1016 (2d Cir. 1982) (siblings); *Duchesne v. Sugarman*, 566 F.2d 817 (2d Cir. 1977) (parent/child). *See also, Singleton v. Cecil*, 155 F.3d 983 (8th Cir. 1998) (husband and wife). "Moreover, family relationships by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctly personal aspects of one's life." *Roberts, supra*, 468 U.S. at 619-20.

In the instant case, the court below, after finding deliberate interference with constitutionally protected associational rights, concluded that the mere fact that petitioners were investigating a serious crime did not authorize them to destroy a family in the name of detective work: "There is only the bare assertion that the officers were conducting a murder investigation. We do not know if their alleged attempts to destroy Patel's family were anything more than a fishing expedition; that is, they may have gone after Patel for no reason other than his relationship to the

victims." Pet. at 12a.

The respondent adequately alleged that petitioners actions were designed to interfere with both his marital relationship and his relationship with his father and siblings, and that, at least with regard to the latter individuals, they succeeded, without any opportunity for respondent to clear his name.

While the petitioners seek to minimize the nature of the interference with respondent's family by suggesting that the complaint alleges nothing more than that false information was disseminated about him, and that, as a result, his father and siblings merely stopped talking to him, Pet. at 17-18, this argument was clearly rejected by the Second Circuit. The petitioners here notably ignore the specific claims that they intended to blame the murders on the respondent by creating hostility and mistrust among family members; that this resulted in a "division" in the family, and that respondent "remains ostracized from the majority of his family;" that he suffered the "extinguishing of familial affection, contact and relationships;" and that petitioners' actions "*completely destroy[ed]* the plaintiff's familial relationships." As the Court of Appeals recognized in an earlier decision, the "most essential and basic aspect of familial privacy" is "the right of the family to remain together without the coercive interference of the awesome power of the state." *Duchesne, supra*, 566 F.2d at 825. *See also, Brokaw v. Mercer*, 235 F.3d 1000 (7th Cir. 2000)(substantive due process violation by officials for interference with family relations properly pled, where defendants forcibly removed child from parents without investigation and held him for four months).

Here, the Chief of Police and a local police detective, under color of law, were intentionally trying to turn the respondent's family against him under the dubious notion that this might develop into leads that could transform baseless suspicion into probable cause for arrest. By engaging in behavior which is likely to destroy family relationships, and which, in fact, does lead to such destruction, the petitioners interfered with constitutionally-recognized rights to familial association. Moreover, the "contours of the right" were "sufficiently clear that a reasonable official would understand that what he [was] doing violates that right." *Warren v. Keane*, 196 F.3d 330, 332 (2d Cir. 1999). Accordingly, the respondent alleged a violation of an established constitutional right.

As they did in the court below, the petitioners rely on *Griffin v. Strong*, 983 F.3d 1544 (10th Cir. 1993), in arguing that the right to family association is not absolute and that no constitutional violation occurred when a police officer lied to a suspect's wife. Pet. at 22. However, the defendants misread that precedent which nevertheless predates the actions here. In *Griffin*, police investigating a man suspected of child abuse lied to the suspect's wife and represented that her husband had confessed to the crime. *Id.* at 1545. Although the Tenth Circuit found that it did not violate the *wife's* right to familial association, it nevertheless determined that "the familial right of association is properly based on the 'concept of liberty in the Fourteenth Amendment,'" and that it constitutes a substantive due process right. *Id.* at 1547, 1549.

While the *Griffin* court determined that the interests of the state in investigating alleged child abuse were "important," the court also held that "the right to associate

with one's family is a very substantial right." *Id.* at 1548, *quoting Arnold v. Board of Education*, 880 F.2d 305, 312-13 (11th Cir. 1989). Nevertheless the Tenth Circuit concluded that the infringement on the wife's familial association rights was "slight" and "minimal." *Id.* at 1549.[4]

In the instant case, Swanson and Searles took actions that went directly to the core of the respondent's relationships with his father, siblings and wife, and the allegations demonstrate clearly, at least with respect to his father and siblings, that the relationship was severely and permanently "impacted." In fact, it was destroyed. By falsely telling the family that Jatin Patel killed his mother and sister, and by systematically inventing phony "evidence" in the very hope of dividing that family relationship, the petitioners' behavior clearly went to the core of the respondent's intimate family relationships and effectively destroyed them.

Furthermore, Swanson's letter to the respondent's wife implicated the core of the marital relationship by falsely stating that respondent was a murderer who *will kill* again, taking the lives of his wife and children in the process. The purpose was clearly to turn his wife against him, regardless of petitioners' assertion that the allegations are not specific enough to demonstrate that this was their intent.

Here, it is not merely the defamatory accusation of being labeled the murderer of his mother and sister which the

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[4] The *Griffin* court also held that "the lie did not go to the core of the [familial] relationship" because "it did not implicate the relationship by impugning [the wife's] conduct." *Id.* Clearly, the lies against plaintiff here did.

respondent claims gives rise to the liberty interest at issue. Rather, it was the intentional acts of the petitioners to brand the plaintiff in this manner for the very purpose of destroying his family relationships and his career because they saw this as an opportunity to plumb for non-existent investigatory leads – regardless of the consequences.

II. PETITIONERS ARE NOT ENTITLED TO QUALIFIED IMMUNITY.

Despite ample authority demonstrating the violation of clearly established constitutional rights, the petitioners maintain that they are entitled to qualified immunity because the constitutional right at issue here is too nebulous to be understood by law enforcement agents trying to do their job. They suggest that the Court of Appeals decision will result in a parade of horrors, placing unreasonable restraints on police, due solely to the "consanguinity" of suspects. Pet. at 22-23.

The Second Circuit opinion said nothing of the kind. Instead, that court correctly interpreted the complaint to mean that petitioners set out to destroy Patel's family ties, with the potential by-product of leads in their stalled investigation, and that such behavior was clearly improper. It is this misconduct that the court below found to be a constitutional violation, and which was adequately articulated prior to the actions of petitioners in 1996.

The respondent adequately articulated a clearly established constitutional right – specifically freedom from unreasonable state intrusion into familial relationships. The court below correctly concluded that the petitioners should have known that their conduct would violate the petitioner's constitutional rights and would have a deleterious and

permanent impact on his family. Furthermore, as this course of conduct was deliberately designed to cause the destruction of the family, it is also clear that a reasonable official should have known that threatening the safety of the respondent's wife and children by suggesting that he would murder them because it is easier to kill the second time, was outrageous conduct that shocks the conscience.

CONCLUSION

For the foregoing reasons, the respondent respectfully requests that this Honorable Court deny the petition for a writ of *certiorari.*

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